

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Bonnie Ritter,

Complainant,

vs.

Gary Motyka,

Respondent.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

**TO: Bonnie Ritter, City Clerk, 5341 Maywood Road, Mound, MN 55364; and Gary Motyka, [Street Address Redacted], Mound, MN 55364.**

On December 16, 2008, the City of Mound filed a Complaint with the Office of Administrative Hearings alleging that Gary Motyka violated Minnesota Statutes § 211A.05 by failing to timely file a campaign financial report certification of filing.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211A.05, subd. 1. This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice – so long as that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A

party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: December 18, 2008

/s/ Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

## MEMORANDUM

Minnesota Statutes § 211A.02 requires candidates or committees who receive contributions or make disbursements of over \$750 in a calendar year, to file financial reports with the “filing officer.”<sup>1</sup> In addition, Minnesota Statutes § 211A.05 subd. 1, requires that candidates or committee treasurers certify to the filing officer that all financial reports required by section 211A.02 have been submitted, or that the candidate or committee did not receive contributions or make disbursements exceeding \$750 in the calendar year. The certification must be submitted to the filing officer no later than seven days after the general or special election.

If a candidate or committee fails to file a required financial report on the date it is due, the filing officer shall immediately notify the candidate or committee of the failure to file.<sup>2</sup> If the report is not filed within ten days after the notification is mailed, the filing officer shall file a complaint under section 211B.32.<sup>3</sup>

Gary Motyka was a candidate who ran unsuccessfully for a seat on the Mound City Council in the November 2008 election. According to the complaint, Mr. Motyka failed to file a Campaign Finance Report Certification of Filing as required by Minn. Stat. § 211A.05. The certificate of filing should have been submitted to the city clerk no later than November 11, 2008.

Bonnie Ritter is the City Clerk for the City of Mound. By letter dated November 10, 2008, Ms. Ritter reminded Mr. Motyka of his obligation to submit the certificate of filing. The last day of the filing period was November 11, 2008 – the state holiday of Veterans Day.

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<sup>1</sup> Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

<sup>2</sup> Minn. Stat. § 211A.05, subd. 2.

<sup>3</sup> Minn. Stat. § 211A.05, subd. 2.

Ms. Ritter asserts that on December 8, 2008, she telephoned Mr. Motyka and left him a message to submit the certificate of filing. To date, the City has not received the Campaign Finance Report Certification of Filing from Mr. Motyka.

Because the City alleges that Mr. Motyka has not filed the campaign financial report certification of filing that was due no later than November 11, 2008, the Complaint states a *prima facie* violation of Minnesota Statutes § 211A.05, subd. 1.

The undersigned comes to the conclusion that the Complaint states a violation of the relevant filing standard notwithstanding the fact that Ms. Ritter did not, it seems, wait until after the close of the filing period to issue a demand letter. *Compare*, Minnesota Statutes § 211A.05, subd. 2. This lapse, however, does not vitiate or excuse the claimed failure by Mr. Motyka to file a certificate, or make the demand for a filing from him improper.

Pursuant to Minnesota Statutes § 211B.33, subd. 2(d), this matter shall be set on for an evidentiary hearing before a panel of three administrative law judges.

An order scheduling this matter for a prehearing conference and evidentiary hearing will be issued shortly.

**E. L. L.**